



## **RESPONSE FROM BRITISH EQUITY COLLECTING SOCIETY LIMITED**

### **European Commission**

#### **GREEN PAPER**

#### **On the online distribution of audiovisual works in the European Union: Opportunities and challenges towards a digital single market**

**7 November 2011**

#### **Background**

British Equity Collecting Society Limited (BECS) is the UK based collecting society that administers performers' remuneration for their work in films and television programmes due from rental, retransmission and certain other exploitation of such works.

BECS represents actors, singers, dancers and other performers who perform in any way, other than musicians. Since 1998 it has paid out more than £42 million in revenue to performers.

Growth in levels of distribution has been significant over the last 12 years.

BECS welcomes the opportunity of responding to the questions raised in the Green Paper. However, it will remain important that responses from right holders to debates surrounding the more widely drawn Commission Communication "A Single Market for Intellectual Property Rights" are addressed.

Wider issues and concerns include the way that recently approved changes to the Copyright Term Directive 2006/116/EC (benefitting performers whose performances are fixed in phonograms) failed to provide for an extension in the term of protection for audiovisual performers. The imbalance in protection resulting from the amended Term Directive remains an urgent issue to be addressed.

However, for the purposes of this Response, BECS will comment directly on questions raised in the Green Paper itself.

#### **1. What are the main legal and other obstacles – copyright or otherwise - that impede the development of the digital single market for the cross-border distribution of audiovisual works?**

Copyright is the enabler for licensing, distribution and marketing of audiovisual works and the performances included within them.

In assessing the reasons why a digital single market may be slow to develop, the cultural and linguistic differences driving interest within communities within EU Member States must be recognised and taken into account.

### **Which framework conditions should be adapted or be put in place to stimulate a dynamic digital single market for audiovisual content and to facilitate multi-territorial licensing?**

Collecting societies that hold mandates for licensing identified restricted acts relevant for copyright works and performances of all kinds at national level should be able (and encouraged) to operate bilateral agreements whereby repertoire mandated to a collecting society in one Member State can be licensed through a single body to cover use for specific acts.

### **What should be the key priorities?**

The framework must recognise that licences should support demand, reflecting cultural and linguistic differences.

In addition, the commercial imperative cannot be ignored. It is a concern that there are now markets for audiovisual works which are exploited and profitable for film producers, but from which audiovisual performers receive no secondary payments. New “false” markets should not be created through Commission regulation at the expense of industry ability to use copyright to develop and fairly benefit from these markets.

When a programme or film is relayed and accessed within a Member State, it is vital that licensing at local level continues to support secondary use under national laws (for application of statutory payments in the form of copyright levies) and public performance or other restricted acts that are normally recognised through payment of equitable remuneration to right owners at local level.

## **2. What practical problems arise for audiovisual media services providers in the context of clearing rights in audiovisual works (a) in a single territory; and (b) across multiple territories?**

Production agreements and collective bargaining agreements linked to the engagement of performers for audio-visual production have long recognised the ability for producers to select up front the rights that they particularly require to clear within the production budget, to service expected distribution.

Funding “up front” clearances for all forms of use is becoming less economically viable for producers as technology enables new “long tail” online licensing options for programmes and films to remain **potentially** accessible to consumers after the initial marketing and promotional stages in the life of an audiovisual work have passed.

It is increasingly difficult to anticipate how much interest there may be in an audiovisual work in the context of use after the initial interest period.

### **What rights are affected?**

It is therefore not the rights that a producer anticipates exploiting (often though uses more traditionally defined by “windows” of exploitation); but instead the “long tail” or secondary rights that may or may not be important for a particular production, for which

it will be important that systems for secondary licensing are put in place and provide fair reward to the rights owners involved in an audiovisual production in the future.

### **For which uses?**

Providing for payments for online use and secondary uses that flow from online accessibility are, and will increasingly become more, important for the long term viability of the audiovisual sector.

It must be remembered that there are differences in value that can flow from different types of "making available a programme to the public by electronic means".

One service may simply offer customers the ability to download a copy of a film or programme for viewing for personal private use in a short specified time period.

The terms for that service may then be varied to charge a premium for customers who wish to view the film or programme over longer periods (or keep a copy of the film as a permanent download).

The same service may then be authorised for certain retransmissions involving other restricted acts (such as public performance in hotels or other public commercially run premises).

All these links in the chain need to be supported by secondary clearance mechanisms. Some of these may involve "options" that can be selected by users at local or national level. Others will trigger statutory payments or payments of equitable remuneration for programme contributors reflecting actual levels of use.

These payments (often impossible to measure at the time a programme or film is made) are an effective way for rights owners to participate in the economic use of their work on an ongoing basis.

### **3. Can copyright clearance problems be solved by improving the licensing framework?**

The expression "problems" implies that copyright is an impediment, rather than a facilitator of use.

This is not accepted. However, it is fair to say that greater transparency about how licences can be obtained and the extent to which collective licensing can facilitate and authorise secondary use, is desirable.

The work of the Commission to encourage this transparency, whilst supporting and recognising the economic advantages of collective licensing in agreed circumstances, is to be welcomed.

### **Is a copyright system based on territoriality in the EU appropriate in the online environment?**

Yes. The system links with the adoption and implementation of International copyright treaties. It provides for recognition of the cultural and linguistic differences which are fundamental to future sustainability and growth of the audiovisual sector.

It enables local and grass roots markets within the audiovisual sector to flourish.

**4. What technological means, for example individual access codes, could be envisaged to enable consumers to access "their" broadcast or other services and "their" content, irrespective of their location?**

The audiovisual sector has always embraced technology for improving the quality and means by which production occurs and the means by which completed productions are offered to the public.

Technology has, and should continue to provide choice for consumers.

Defining markets through the use of passwords, permission and types of content reflecting different technologies is vital to enabling development and growth of the sector.

However, this does not mean that, simply because the technology exists, users should be able to demand access to content if this is on terms that remove the rights of performers and others to consent to the use of their work by others, or the ability to negotiate and secure fair remuneration for use.

**What impact might such approaches have on licensing models?**

See comments above.

**5. What would be the feasibility, and what would be the advantages and disadvantages of, extending the "country of origin" principle, as applied to satellite broadcasting, to online audiovisual media services?**

The country of origin principle does not prevent additional, or secondary payments becoming due to rights owners as a result of cable retransmission of a broadcast service within a country in which the broadcast can be received.

Therefore any consideration of applying the country of origin principle to the place from which a service "makes available to the public programming in electronic form" by means which does not constitute "broadcasting" – but does involve "making available on demand" (and potentially other forms of "communication to the public"), must acknowledge and preserve the ability for secondary uses to continue to be licensed at local national level.

A consistent approach is needed over the extent to which simulcasting of broadcasts using the internet amounts to a "broadcast" of copyright works rather than some form of "communication to the public" which is not a broadcast.

**What would be the most appropriate way to determine the country of origin" in respect to online transmissions?**

The place/base of servers from which audio-visual works may be stored and made available online is much more flexible than the licensing requirements relevant to broadcasting organisations (the latter helping to provide a fixed point from which broadcasting signals are "introduced under the control and responsibility of the broadcasting organisation).

It therefore appears that the provisions envisaged under Chapters 2 and 3 of the EC Cable and Satellite Directive must be considered to assess the intended areas of reception for a service (rather than considering the (possibly artificial) point of server origination alone.

**6. What would be the costs and benefits of extending the copyright clearance system for cross-border retransmission of audio-visual media services by cable on a technology neutral basis?**

The way in which different Member States regulate the relationship between "broadcast services" on the one hand and "cable programme services" on the other, creates difficulties in reconciling the copyright restricted acts that are relevant to the inclusion of programmes in such services.

It is important that rights owners can understand and distinguish when an online service involves:-

- (a) **only** the broadcasting of works; or
- (b) **only** communication to the public in a cable service which is NOT to be treated as either "broadcasting" or "making available to the public, by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them"; or
- (c) **only** the making available to the public, by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them.

Alternatively, if a service involves a combination of the above elements, the rights that will be relevant to "re-use" by some or all recipients of the service may differ.

These differences will remain important to support growth of new business models, and allow for distinctions in the economic value of the service to users (and hence to rights owners) to be recognised, with variations in compensation flowing to rights owners resulting from this.

**Should such an extension be limited to "closed environments" such as IPTV or should it cover all forms of open retransmissions (Simulcasting) over the internet?**

Please see comments above.

**7. Are specific measures needed in light of the fast development of social networking and social media sites which rely on the creation and upload of online content by end-users (blogs, podcasts, posts, wikis, mash-ups, file and video sharing)?**

Clarity in setting terms and conditions and improving consumer understanding of the terms and conditions applicable for accessing online services and contributing content to them must be addressed.

The practical reality of users failing to read or understand the terms and conditions legitimately attached to online services, is a challenge for all online service providers. Those who create and contribute content to blogs, podcasts and social network services need to understand that the original work that they create is a copyright work in its own right.

Contributors need to understand the rights that they licence or grant to the service operators who first publish their work.

**8. How will further technological developments (e.g. cloud computing) impact upon the distribution of audiovisual content, including the delivery of content to**

## **multiple devices and customers' ability to access content regardless of their location?**

It will be vital that the provisions recognised in Article 6 of Directive EU 2001/29 concerning the protection of technological measures and rights-management information continue to apply to licences for copies of audiovisual works to be stored, accessed and electronically communicated within cloud computing services.

Only if such measures can be applied and used to distinguish uses that may be accepted as falling within copyright exceptions and limitations, will the ability to license what would otherwise be infringing or unauthorised copyright acts, be preserved.

The extent to which cloud computing may facilitate reproduction of audiovisual works (and therefore audiovisual performances) "by a natural person for private use and for ends that are neither commercial nor indirectly commercial" will need careful review for the purposes of the future application and interpretation of Article 5.2(b) of the EC Copyright Directive.

This Article rightly recognises the importance of any private use exception being conditional upon right holders receiving fair compensation which takes into account the application or non-application of fair compensation.

BECS has long argued that the current UK approach towards recognition of private copying exceptions does not properly reflect the intention of Article 5.2(b) of the EC Copyright Directive as far as audiovisual performers are concerned. BECS concerns have been increased as a result of the recent UK based Hargreaves Review of Intellectual Property and Growth which considers that certain exceptions for private copying may be introduced in circumstances where the "fair compensation" for right holders would be zero.

In its response to the UK Government BECS highlighted the way in which it collects private copying and other statutory revenues due to actors and other performers (other than musicians) when the statutory revenues are recognised and provided for by the laws of the vast majority of EU Member States.

It is a real concern that the UK Government has endorsed the Review's central thesis that "the widest possible exceptions to copyright within the existing EU framework are likely to be beneficial to the UK, subject to three important factors".

Reservations include the fact that "the three important factors" include adherence with EU and international treaties.

Under these EU and international treaties, most EU Member States have found that copyright levies are the only practical means to provide "fair compensation" to cover private copying.

Therefore BECS has urges the UK Government to recognise that careful work is needed to see how the UK can select cases where "the amount of harm to rights holders that would result in "fair compensation" under EU law is minimal, and hence the amount of fair compensation would be zero".

BECS believes that this work must be properly linked with wider review of the private copying issues to be undertaken by the European Commission.

## **9. How could technology facilitate the clearing of rights? Would the development of identification systems for audiovisual works and rights ownership databases facilitate the clearance of rights for online distribution of audiovisual works?**

BECS has welcomed the development in International standards for the identification of audiovisual works, versions of the works and clips or extracts from them.

BECS operates a database covering the work of its 26,500 plus audiovisual performer members. Individual identifiers are attached to the records held for each performer. These identifiers are then used by third parties to link the work of a performer with use of programmes in secondary markets across the EU.

BECS actively participates in discussions to facilitate the effective linking of data records about the work of an individual performer in order that identifiers can ensure third parties link the right individual with use of a performance in a programme or film.

It will remain important that the Commission encourages and promotes the work to streamline and develop these audiovisual performer identifiers.

This important support links well with BECS recent response to a UK consultation on intellectual property, within which BECE responded to a question about whether or not the UK copyright frameworks supports growth and innovation.

In responding positively to this question, BECS outlined some of the online services operating today including the delivery and use of copyright works by business and consumers, which were unheard of 20 years ago.

These new services are evidence of the way in which the copyright framework has been able to adopt to the economics and opportunities of the digital age.

New definitions that have been developed within film and television programme licence agreements provide evidence of the way in which the long recognised restricted acts linked to copyright works and performances are providing the framework for new divisions of the rights linked to new services.

These new divisions support licensing within new on-demand and pay tv markets being licensed by rights owners. Catch up TV services and E-books and E-Magazines and delivery using Apps on a range of electronic tablets are all part of everyday life within the UK and many other countries around the world. They are new. They rely on copyright and they should therefore trigger payments for rights owners to stimulate the creation of new content for the new services.

There are problems in establishing appropriate prices for use within new services as between rights owners and users; but this is not the fault of the copyright framework itself.

The framework provides for an opportunity to negotiate for the use of work when a third party wishes to use the work of a performer or copyright owner, with a view to gaining from it.

In the case of BECS, the Catch up Video on Demand payments negotiated between Equity (UK Trade Union for performers) and the BBC, ITV and Channel 4 are now of real benefit to audiovisual performers because BECS is able to provide distribution services which ensure that all performers whose work is included in the new services, benefit from the new use.

**Voluntary licensing solutions, supported by collecting societies offering distribution services which facilitate the processing of micro payments resulting from rights clearances, must be a central part of applying copyright in the future.**

Databases holding information about the individual contributors to audiovisual works will become an increasingly important resource for ensuring that back office licensing functions operate to cover the reporting and accounting of micropayments to

contributors. Such back office functions will be vital to securing the economic benefits for right holders from online use in the future.

ISAN and V-ISAN and other identifiers applied to copyright films and television programmes need to be supported by identifiers that apply to individual performers whose work is included within a film or television programme identified at ISAN level. BECS participates in discussions with other collecting societies to develop and promote the use of internationally recognised performer identifiers through organisations such as the Independent Performer Database Association (IPDA).

### **What role, if any, is there for the European Union?**

See comments above concerning support for the use of internationally recognised identifiers for audiovisual performers.

### **10. Are the current models of film financing and distribution, based on staggered platform and territorial release options, still relevant in the context of online audiovisual services?**

The reality is that the staggering of exploitation windows for the release of new films and television programmes is changing in response to market demand and pressure from piracy and illegal or unauthorised online access to new work.

However, the exclusive rights recognised in copyright films and the works that are included within them must not be eroded by artificial intervention to prevent this continued evolution of the free market.

The means by which a producer seeks to recoup the production costs of a new audiovisual work can and should continue to vary depending upon the subject matter or nature of the new work.

### **What is the best means to facilitate older films which are no longer under an exclusivity agreement being released for online distribution across the EU?**

Distinctions need to be made between older films which a producer or distributor does not believe it is economic to make available for online distribution and older films which are included in an archive where non commercial release for access on line is being prevented because the identity of relevant rights owners cannot be traced after diligent search.

The work being undertaken by the Commission to address how diligent search processes to identify rights owners may work in practice, is welcome.

The importance of both collecting societies who represent the interests of audiovisual performers within the EU and the unions responsible for the negotiation of collective bargaining agreements which support clearances being obtained for or on behalf of audiovisual performers must be recognised by the Commission as an effective means for facilitating clearance of rights in older films for which there is a genuine market interest in online distribution.

In addition it must be recognised that the copyright framework has evolved to recognise the right of making available of work electronically on demand since the time when many of these older films were made.

Systems must be developed to apply the rights of audiovisual performers that are now relevant to online use of older films.

This can and should be done through the work of collective bargaining organisations when older union agreements require updating to recognise the new rights that are now relevant to use within EU Member States.

Where this is not possible, it cannot be right, fair or equitable that “no remuneration” is an option. Alternative systems to provide for payments to be made to audiovisual performers from new online uses should be put in place to reflect economic use of all films (both old and new) when the recognised right of authorising making available on demand of an audiovisual work including an audiovisual performance is relevant.

### **11. Should Member States be prohibited from maintaining or introducing legally binding release windows in the context of state funding for film production?**

No. Release windows must be a recognisable part of the exercise of exclusive rights recognised in the copyright in new films and other copyright works embedded within them.

New technologies, threats from piracy and other commercial pressures may alter the way in which windows are addressed by rights owners, investors and users.

### **12. What measures should be taken to ensure the share and/or prominence of European works in the catalogue of programmes offered by on-demand audiovisual media service providers?**

This question ignores the fundamental nature of the “restricted copyright act” which is licensed to enable films and programmes to be included within on-demand audio-visual media services.

The reality is that works are include in such services and made available to the public **in a way that members of the public may access them at a time and a place and at a time individually chosen by them.**

In view of this, the benefits to a consumer of insisting that an online service offers a quota of programmes from a particular source would not seem helpful for economic growth (in the way that quotas were relevant to provision of broadcasting services).

In the case of on-demand services the consumer/public chooses what they wish to view. If a particular type of programme is not available from one service provider, the market should enable another service to offer films and programmes for which a demand has been identified.

### **13. What are your views on the possible advantages and disadvantages of harmonising copyright in the EU via a comprehensive Copyright Code?**

BECS is a member of the British Copyright Council (BCC). The BCC has followed with interest the work that led to publication of The Wittem Project – European Copyright Code in April 2010. However, BECS does not believe that the Code is a practical substitute for EU adoption and implementation of International Copyright Treaties. BECS has particularly supported the work of the WIPO Standing Committee on Copyright and Related Rights in taking forward debate on the proposed Treaty for the Protection of Audiovisual Performers. It is to be hoped that the Commission will support the adoption of the Treaty in Diplomatic Conference and promote the effective recognition of the rights provided for in the draft Treaty at the earliest opportunity.

#### **14. What are your views on the introduction of an optional unitary EU Copyright Title?**

##### **What should be the characteristics of a unitary Title, including in relation to national rights?**

BECS believes that the needs of EU Member States would be better served by allowing the cultural and linguistic differences within the European Union to support the development of new markets within the creative industries.

As the use of copyright works increasingly involves the use and electronic communication of digital copies of works, the importance of licensing being able to facilitate use by the audiences within the community on a demand led basis will remain important.

This demand led approach can be maintained and developed by the EU :-

- (a) taking a lead in debates at WIPO and International level to show how the new digital markets are developing against the background of the uses in which exclusive rights are recognised;
- (b) encouraging the application of digital identifiers to copyright works of all types and links with rights owner operated databases to promote and facilitate licensing;
- (c) recognising that a balance must be maintained between application of exclusive rights and effective application of rights where provision for equitable remuneration or fair compensation can only practically and economically be secured through licensing via collecting societies; and
- (d) recognising and making provision for the balance referred to above to be applied in different ways for different types of copyright work and performances.

All this will be particularly important as the Commission follows up the Green Paper addressing opportunities and challenges towards a digital single market and the EU plays its role as WIPO works towards holding a Diplomatic Conference for the adoption of a Treaty on the Protection of Audiovisual Performances.

#### **15. Is the harmonisation of the notion of authorship and/or the transfer of rights in audiovisual productions required in order to facilitate the cross border licensing of audiovisual works in the EU?**

As a society representing the interests of audiovisual performers, BECS has been concerned that the issues surrounding the proposed wording for Article 12 of the possible WIPO Treaty on the protection of Audiovisual Performances (dealing with transfer of rights) has led to international progress towards adoption being delayed for over 10 years.

It is therefore vital that the flexibility now recognised within the proposed wording for Article of the Treaty is recognised and supported by the Commission.

The final paragraph proposed for Article 12 is of particular importance to ensure that the increasingly important role played by collecting societies representing the interests of Audiovisual performers within EU Member States can continue to develop and ensure that secondary payments are recognised and provided to performers for the economic use of their work within online services and the European digital markets of the future.

**16. Is an unwaivable right to remuneration required at European level for audiovisual authors to guarantee proportional remuneration for online uses of their works after they transferred their making available right?**

Not as the only option for all services that involve use of the making available rights of authors. Please see specific responses to question 18 concerning audiovisual performers.

**If so, should such a remuneration right be compulsorily administered by collecting societies?**

For the reasons described in response to question 18, it is believed that collecting societies may have different roles in facilitating the collection and distribution of remuneration linked to making available rights and other communication to the public rights recognised for audiovisual performers.

**17. What would be the costs and benefits of introducing such a right for all stakeholders in the value chain, including consumers?**

**In particular, what would be the effect on the cross border licensing of audiovisual works?**

For the reasons previously described, producers and distributors should be able to select the services in which they wish their programmes to be sold for online use. These services will continue to reflect the cultural and linguistic differences which drive audiovisual distribution, whilst allowing for new markets to become established and grow, reflecting interest and demand.

The cost benefits from the application of these systems of secondary payments will include:-

- (a) the ability of rights owners to receive secondary payments for the use of their work that reflects economic use and consumer interest;
- (b) the ability for producers to participate in such secondary revenues rather than having to include all rights buyouts for contributors at the time that a film or new television programme is made;
- (c) consumers being given wider choice of programmes within available online services, due to release becoming more economic for the producers, and the collecting society and secondary licensing markets taking on the responsibility for collection and distribution of payments to underlying rights owners (including audiovisual performers).

**18. Is an unwaivable right to remuneration required at European level for audiovisual performers to guarantee proportional remuneration for online uses of their performances after they transferred their making available right?**

**If so, should such a remuneration right be compulsorily be administered by collecting societies?**

Not as the only option for all services that involve use of the making available rights of audiovisual performers.

As previously stated, it will be vital that audiovisual performers are able to secure fair economic returns from the ongoing use of their works within online audiovisual services within the digital marketplace.

BECS believes that recognition of an exclusive right for performers to consent to the electronic "making available" of a recorded performance on demand has been vital to ensuring that audiovisual performers within the UK have received some payment for the use of their work within a number of new online services , which were not even thought of 20 years ago.

The way that the exclusive rights have been linked to collective bargaining agreements for audiovisual performers within the UK, has been important for growth.

In countries with poor collective bargaining representation, assumptions have been made over the transfer of rights to producers, prompting support for provision of a "right to remuneration" for the exercise of the making available right, rather than contractually negotiated payments that can better reflect the true value of consents secured against profits/returns from use within individual new services.

The relative strength of collective bargaining representation for performers within the UK has helped to ensure that "fair compensation" for performers has been paid for use of performances in new services, during recent years.

This approach has a number of advantages over provision for a mere right to "equitable remuneration" for the making available of audiovisual performances in on demand online services.

In particular, where the actual value of new online uses cannot be easily identified before a recording including audiovisual performances has been made, a negotiated approach to fixing payments if and when rights are to be exercised, avoids overweighting up front payments within budgets for new productions.

The "costs" of underlying copyright clearances can then be spread to link with different types of exploitation, with payments to rights owners being fixed by agreement with producers and performers, but collection and distribution of payments being handled through appointed collecting societies.

In this context BECS has welcomed and supported moves to :-

(a) ensure that the "making available right" operates effectively and "is truly beneficial for performers";

(b) enable collecting societies to play an appropriate role in enabling the identification of performances fixed in sound recordings and films which are made available on demand; and

(c) enable collecting societies to play an effective role in the allocation and distribution of monies due to performers when

(i) contractual arrangements do not secure effective and equitable remuneration to be paid for use of the making available right and/or

(ii) the identity and/or the whereabouts of an individual performer is not certain at the time when a user wishes to exercise making available on

demand rights in a sound recording or film under a contract whereby the owner of the sound recording or film has authorised such use.

(d) enable collecting societies to play a role in the processing and distribution of collectively negotiated payments for the benefit of audiovisual performers, when the micropayments involved would be uneconomic through more traditional distribution reporting systems.

**19. What would be the costs and benefits of introducing such a right for all stakeholders in the value chain, including consumers?**

**In particular, what would be the effect on the cross border licensing of audiovisual works?**

BECS firmly believes that systems for the collection and distribution of secondary remuneration for audiovisual performers reflecting online on demand use of audiovisual works can apply and operate at national level with the support of collecting societies operating within the different EU Member States.

For the reasons previously described, producers will wish to select the services in which they wish their programmes to be sold for online use. These services will continue to reflect the cultural and linguistic differences which drive audiovisual distribution, whilst allowing for new markets to become established and grow, reflecting interest and demand.

The cost benefits from the application of these systems of secondary payments will include:-

(a) the ability of rights owners to receive secondary payments for the use of their work that reflects economic use and consumer interest;

(b) the ability for producers to participate in such secondary revenues rather than having to include all rights buyouts for contributors at the time that a film or new television programme is made;

(c) consumers being given wider choice of programmes within available online services, due to release becoming more economic for the producers and

(d) the collecting society and secondary licensing markets taking on the responsibility for collection and distribution of payments to underlying rights owners (including audiovisual performers) so that fair compensation is secured without unnecessary bureaucracy.

**20. Are there other means to ensure the adequate remuneration of authors and performers and if so which ones?**

Yes. Payments secured through collective bargaining agreements using the services of collecting societies (and the databases for recording and processing payments to individual performers) will improve enable the payment of micropayments. This will be particularly important to audiovisual performers for the reasons outlined in this response.

**21. Are legislative changes required in order to help film heritage institutions fulfil their public interest mission?**

**Should exceptions of Article 5(2)(c) (reproduction for preservation in libraries) and of Article 5(3)(n) (in situ consultation for researchers) of Directive 2001/29/EC be adapted in order to provide legal security to the daily practice of European film heritage institutions?**

There important difference between making provision for copies of film materials to be made to enable physical preservation and permitting film heritage institutions to have the benefit of new copyright exceptions linked to making available archive materials online in ways that will effectively give a competitive advantage to film heritage institutions over other parties who might wish to invest in new services to make such archive materials available within online digital services in the future.

This must be borne in mind as the debate about possible systems for the licensing and use of orphan works and performances linked to older films and other audiovisual works progresses within the European Parliament.

**22. What other measures could be considered?**

BECS is a member of the British Copyright Council and supports the collecting society led proposals for a national solution to the future licensing of orphan works within the United Kingdom. This proposal recognises and encourages the use and operation of bilateral agreements between collecting societies in different EU Member States to recognise the orphan works licences that a collecting society is authorised to grant in one Member State when the licence involves cross border use within the EU.

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